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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,084	09/09/2003	Raymond Joseph Reisdorf	TP2686 US NA	1439

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E I DU PONT DE NEMOURS AND COMPANY
LEGAL PATENT RECORDS CENTER
BARLEY MILL PLAZA 25/1128
4417 LANCASTER PIKE
WILMINGTON, DE 19805

EXAMINER

YAO, SAMCHUAN CUA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/658,084

Applicant(s)

REISDORF ET AL.

Examiner

Sam Chuan C. Yao

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-5,8-15 and 18.

Claim(s) withdrawn from consideration: 6,7,16 and 17.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see the attached Examiner's remarks.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Sam Chuan C. Yao
Primary Examiner
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Remarks

1. As for Counsel's argument regarding the species election requirement, the two species are patentably distinct. Therefore, it would be burdensome for the examiner to consider these two patentably species. Should Counsel traverse examiner's reason, then applicant should submit evidence or identify such evidence now of record showing **the species to be obvious variants or clearly admit on the record that this is the case**. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. On pages 3-5, Counsel argues that while the claimed melt indices of *"at least 150"* overlaps melt indices of 2-500 dg/min taught by WO '806, which *"... would appear to establish a prima facie case of obviousness as the present claims"* (*"prima facie"* originally in italic form), Applicant can rebut a prima facie case of obviousness by showing the prior art teaches away from the claimed invention. Accordingly, since WO '806 teaches using a molten adhesive having a viscosity which is sufficiently high to prevent the adhesive from flowing as rapidly into a secondary backing. Is Counsel suggesting that, WO '806 teaches away from using a molten adhesive which has a melt index of around 500 dg/min? If so, why then WO '806 expressly teachings using a molten adhesive which has a melt index of up to around 500 dg/min. As for *In re Peterson* cited by Counsel, Examiner agrees with the court. *"... the existence of overlapping or encompassing ranges shifts the burden to the applicant to show that his*

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invention would not have been obvious In present case, the claimed melt indices of a hot-melting adhesive significantly overlaps with the melt-indices of a hot-melting adhesive taught by WO '806. Therefore, the burden shift to Applicant by showing for example unexpected benefit/result regarding the claimed melt-indices in order to provide a showing of non-obviousness. As for Counsel's assertion that, there is no reasonable expectation of success of using a low viscosity hot-melting adhesive in a process taught by WO '806. Examiner strenuously disagrees. It is quite clear that an adhesive having a melt-index of up to around 500 dg/min is taught by WO '806. This melt index clearly falls within the claimed melt-indices. Moreover, although not presently required, since Reith teaches using a hot-melting sheets comprising a lower viscosity layer *"to promote good tuft encapsulation and tuft-bind strength"*, and a higher viscosity layer *"to prevent bleedthrough of the lower viscosity adhesive into the secondary backing during the lamination process"* (col. 4 lines 43-55), it would have been obvious in the art to apply a molten two-layer hot-melting adhesive comprising a low viscosity layer and a high viscosity layer onto a backing of a carpet in a process taught by WO '806.

On page 6, Counsel argues that, the claimed melt-indices constitute a sub-genus, while the melt indices of WO '806 constitute a genus. Examiner strongly disagrees. The end point (i.e. 500 dg/min) of melt-indices taught by WO '806 falls within the claimed melt-indices. In fact, the melt-indices of a hot-melting adhesive taught by WO '806 is narrower than the recited melt-indices of an adhesive, because the recited melt-indices

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is open-ended, while an adhesive of WO '806 has a maximum melt-index of about 500 dg/min.

On page 7, Counsel argues that, an adhesive taught by Reith is in a sheet form, while the claimed adhesive is a molten and a low viscosity polymer. This does not change that the fact WO '806 (i.e. the primary reference) teaches applying a adhesive in an extruded molten state. As for Counsel argument regarding a melt index of an adhesive taught by Reith, Counsel is taking the teachings of Reith out of context. The adhesive does not consist of LDPE only. The adhesive includes other resin components which could affect a viscosity of a resultant adhesive composition (col. 6 line 59 to col. 7 line 25). In any event, Counsel's attention is directed to column 7 lines 26-51, where Reith clearly teaches using a polyethylene-vinyl acetate resin for a low viscosity adhesive layer; wherein this resin has a melt-index of about 100-400 dg/min.

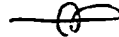
As for Counsel's arguments on pages 8-9 regarding the Fink patent, the Fink patent is merely cited to show that it is well recognized and appreciated in the art regarding the desirability of using a low viscosity hot-melt adhesive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (571) 272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sam Chuan C. Yao
Primary Examiner
Art Unit 1733

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